Universal Veneer Mill Corp. *and* Ohio State Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 8-CA-14180

May 6, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

On December 14, 1981, Administrative Law Judge Thomas D. Johnston issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Universal Veneer Mill Corp., Newark, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

We also correct the following inadvertent error in the Administrative Law Judge's Decision: at sec. III,A, par. 5, Bryson earned $4.15 per hour, not $4.50, on the third shift.

[2] In adopting the Administrative Law Judge's finding that Bryson was not a supervisor under Sec. 2(11) of the Act, we do not rely on his finding that employees who regularly worked on the third shift did not refute Bryson's testimony that Bryson did not direct them in their taking breaks, since such employees never testified at the hearing.

DECISION

STATEMENT OF THE CASE

THOMAS D. JOHNSTON, Administrative Law Judge: This case was heard before me in Newark, Ohio, on July 13, 1981, pursuant to a charge filed on September 8, 1980,[1] by the Ohio State Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (herein called the Union), and a complaint issued on October 16.

The complaint alleges that Universal Veneer Mill Corp. (herein called Respondent) violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (herein called the Act), by discharging and/or terminating Wayne Bryson,[2] and thereafer refused to reinstate him because he had, or Respondent believed he had, engaged in union activity and/or protected concerted activity;[3] and violated Section 8(a)(1) of the Act by, in a conversation with Bryson, unlawfully conditioning his reemployment upon his refraining from further activity on behalf of the Union.

Respondent, in its answer served on October 22, denies having violated the Act and asserts as additional defenses that neither Bryson's job nor any activities in which he engaged in were protected under the Act and that his employment "would not have been terminated other than under the circumstances it was terminated even in the presence of any claimed protected conduct."

The issues involved are whether Bryson is a supervisor under the Act, and, if not, whether Respondent violated Section 8(a)(1) and (3) of the Act by discriminatorily discharging and refusing to reinstate Bryson because of his union activity and made an unlawful statement to him concerning his reemployment.

Upon the entire record[4] and from my observation of the witnesses and after due consideration of the briefs filed by the General Counsel and Respondent, I hereby make the following:[5]

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, an Ohio corporation with its principal place of business located at Newark, Ohio, is engaged in the business of the manufacture of veneer. During the course of its operations, Respodent annually ships goods valued in excess of $50,000 from its Newark, Ohio, facility directly to points located outside the State of Ohio.

Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Ohio State Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, is a labor orgnization within the meaning of Section 2(5) of the Act.

[1] All dates referred to are in 1980, unless otherwise stated.

[2] Bryson's correct name is Wayne Bryson, Jr.

[3] The General Counsel defined "protected concerted activity" as used here to mean union activity.

[4] The General Counsel filed a motion, without asserting any basis in support of it, to amend the transcript. This motion, except to the extent it seeks to correct the spelling of the General Counsel's last name and to change "collaborative" to "corroborative," was opposed by Respondent on the grounds such changes would not accurately reflect the testimony given by the discriminatee Wayne Bryson. Having duly considered the matter, the General Counsel's motion is hereby denied except to the extent of the two unopposed changes which are hereby granted.

[5] Unless otherwise indicated, the findings are based on the pleading, admissions, stipulations, and undisputed evidence contained in the record which I credit.

III. THE UNFAIR LABOR PRACTICES

A. *Background and the Supervisory Status of Bryson*

Respondent operates a plant located at Newark, Ohio, where it is engaged in the manufacture of veneer. Included among its official and supervisory personnel were President Hans Landert, Vice President of Personnel Administration Heinz Birtler,[6] First Shift Supervisor Arthur Hurni, and Second Shift Supervisor Daniel Griffith, Jr.[7]

Respondent operated three shifts in August, employing approximately 118 employees who were not represented by any labor organization. Each shift had a shift supervisor and under them on both the first and second shifts were department supervisors. The third shift did not have any department supervisors.

Wayne Bryson, Jr., the discriminatee, was employed by Respondent from about May 15 until his termination on August 19. He worked as a log handler on the second shift until about July when he was transferred by Vice President Birtler to the third shift. According to Bryson, at the time of his transfer Birtler asked him whether he wanted to take over the third shift and informed him he was to see that the machines and boiler operated all right.

Birtler, who described Bryson's transfer as a promotion, stated he informed Bryson that his primary duty was to insure that all the veneer left over from the other two shifts was dried and to insure the proper operation of the boiler. He also said he instructed Byrson to take charge of the overall operation of the plant during that shift. He was responsible for and had the authority for managing the personnel to see that they complied with company rules and completed their assigned work.

Bryson, who earned $4.50 an hour upon being transferred to the third shift, received shift differential pay like the other employees but no wage increases or additional benefits.

Respondent's supervisors, except for certain supervisors from Switzerland who were salaried, were hourly paid. Respondent's payroll records, as observed by Bryson, reflected three of the supervisors earned from $5 to $7 per hour. They, as well as Bryson, punched timeclocks as did all the employees.

The third shift hours was from 11:30 p.m. to 6:30 a.m. Unlike the other two shifts, only four employees besides Bryson worked on that shift, which was not a full production shift. The production work performed on the third shift consisted of completing the drying on the veneer left over from the other two shifts. Only one of the three dryers was operated at a time.

Bryson stated that the duties[8] of the four employees working on his shift were to position the veneer to go through the dryers and afterwards stack it on carts. Two employees worked in front of the dryers while the other two employees worked behind them. They were trained on other shifts and would begin with the fullest dryer and then move automatically to the next dryer. If the dryers jammed up, they would unjam them if Bryson was not there at the time. Whenever their work on the dryers was completed they would, without being told, sweep the floors.

Bryson stated that his own duties were to make sure the dryers were operating properly; to change blown fuses on them, to clear them out if they jammed up, and to keep a constant check on the boiler and make sure it was operating. He estimated that he spent approximately 90 percent of his time tending to the boiler, which was located in the basement approximately 800 to 900 feet from where the dryers were located on the top floor. This was necessary because the boiler, which heats the dryers and vats where logs are originally soaked so the bark can be removed, was constantly jamming up where the wood chips enter the boiler.

Additionally, he was responsible for answering the telephone, filling out reports on the amounts of veneer dried on the shift, and checking, as did other employees, the moisture content of the veneer with a gauge after it came out of the dryers. He did not attend supervisory meetings held by Respondent.

Insofar as the other employees were concerned, he was responsible for making sure they were there and that the work to be performed was done. He took attendance of the employees, which he gave to Birtler. If an employee reported to work late, he would sign the employee's timecard[9] to show he knew what time the employee arrived. When an employee had to go home early because of illness, the employee would inform Bryson. Bryson would then call in a replacement employee by going down a list of names of employees furnished to him by Respondent and taking the first employee who answered the telephone and wanted to work. Bryson would sign the replacement employee's timecard showing the arrival time. However, Bryson denied being responsible for determining the reasons why employees were late or absent. For those employees who were going to be absent and called in prior to the start of the shift, usually the second-shift supervisor would find a replacement for them.[10]

Should a serious production problem arise, Bryson had been provided a list of names of those persons in authority to call.

Bryson denied being involved in making up work schedules; the initial assignments of employees; transferring employees to different jobs or shifts; hiring or firing employees or recommending such actions; performing job evaluations; redressing grievances; or authorizing vacations.

While Birtler claimed Bryson had the authority to recommend the discharge of employees as did other supervisors by bringing their recommendations to him, whereupon, he would then make the final determination himself, it was not shown they could effectively recommend such action. I credit Bryson's denial he had such authority.

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[6] Birtler, a supervisor under the Act, was involuntarily terminated about February 6, 1981.

[7] Griffith is presently maintenance supervisor.

[8] Birtler, in part, corroborated Bryson's testimony about their duties.

[9] Byrson's name appeared on a list of supervisory personnel listing the initials of those persons who signed employee timecards.

[10] Second-Shift Supervisor Griffith corroborated Bryson's testimony about arranging for replacements.

Bryson also denied having the authority to take disciplinary action on his own; stating Birtler had instructed him that if a situation arose, like an employee not performing his job, for him to hold the employee over until Birtler could arrive and take such action himself. Birtler acknowledge giving such instructions to Bryson.

With respect to assigning work, Bryson denied he was authorized to or had ever had the occasion to assign work to employees, stating their work was preassigned to them. Although he acknowledged having stated in an affidavit given to a Board agent that as a group leader on the third shift he assigned work, his explanation for such statement was the assumed he would have such authority since Birtler had told him he would be head of the shift.

Sheryl Farley, who worked on another shift but filled in on the third shift when needed, testified that each evening when working on the third shift Bryson assigned her to her job. However, she acknowledged she always ran the dryers except for sweeping the floors when the veneer work was completed and on a few occasions she flipped logs.[11]

Bryson denied being able to recall who Farley was or whether she worked on his shift. None of those employees regularly employed on the third shift testified concerning their being assigned work by Bryson.

While employee Liza Porter testified that before the third shift started she observed Bryson getting his work instructions from Second-Shift Supervisors Griffith and Bill Bradley, she did not specifically testify concerning what, if anything, she overheard said on those occasions to support her testimony. This was denied by Bryson, whom I credit.

Bryson denied ever authorizing or assigning employees to work overtime.[12] According to him, overtime was authorized by the other shift supervisors who would ask him whether his employees wanted to work overtime, and he would relay their requests to the employees.

Although Birtler claimed Bryson was responsible for determining whether third-shift employees worked overtime, he could only recall one occasion in which he said it occurred but could not establish a date. His testimony of that incident was based on his seeing the employees there and his recollection that Bryson's initials were on the employees' timecards[13] authorizing the overtime. Absent, as here, denials by others shift supervisors that they authorized the overtime, I credit Bryson's denials he did so.

Employees were authorized two 10-minute break periods and a 30-minute lunch period but at no set times.

Birtler testified that Bryson was responsible for determining when the break periods would start and end. Sheryl Farley stated that, on occasions when she worked on the third shift, Bryson would tell them when to take their breaks and when to return.

Pamela Nethers, who was Bryson's niece, also stated under cross-examination that she worked on this third shift about three times and Bryson would tell them when their lunch period was up.

Bryson, who sometimes took his lunch periods and breaks with the employees, denied instructing them when to go or return and stated that they normally took them together on their own without being told.

While I find Bryson did instruct Sheryl Farley and Pamela Nethers about their breaks as they testified, they were not regularly employed on the third shift and those employees regularly employed on the shift did not refute Bryson's testimony, which I credit, about their taking break periods on their own.

Both Lisa Porter, who worked on the second shift, and Sheryl Farley testified that Bryson threatened them with discharge if they did not sign union cards.[14] Although both refused to sign cards they were not discharged, Bryson also denied making such threats.

Section 2(11) of the Act defines a supervisor as:

> . . . any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

An individual need only have one of the indicia enumerated to be a supervisor. *Research Designing Service, Inc.*, 141 NLRB 211, 213, fn. 4 (1963).

Based on the foregoing finding pertaining to the authority and duties of Bryson, I find he neither possessed nor exercised any of the necessary authority enumerated in Section 2(11) of the Act to be a supervisor under that Section and I hereby reject Respondent's defense that Bryson was a supervisor within the meaning of Section 2(11) of the Act.

B. *Bryson's Discharge*

Wayne Bryson, Jr., was active in the Union's organizing campaign. His activities, which began about August 11, consisted of contacting Union Business Agent Jacobs about organizing Respondent's employees, attending union meetings, passing out union authorization cards and giving them to other employees to pass out, and soliciting employees to join the Union. He distributed these cards to employees at the plant on August 14 and 15 during their break periods; by the lunch room as the first-shift employees arrived for work and by the timeclocks as the second shift ended. According to Bryson, he was observed passing out union cards by two supervisors, namely, Second-Shift Supervisor Griffith and Andy Breitenmoser, and they asked him what he was doing. He informed them he was handing out union cards and he gave one to Breitenmoser. Although Griffith denied

[11] Flipping logs consists of turning over the dried veneer on the carts in preparation for the cutters.

[12] Bryson acknowledged having stated in an affidavit given to a Board agent he had "standing to authorize overtime." However he explained this applied only to those occasions he signed the timecards of employees he would call to come in and replace employees who left work early because of illness.

[13] These timecards were not proffered as evidence.

[14] This evidence was proffered by Respondent solely in support of its position to show Bryson was a supervisor.

seeing Bryson passing out union cards and Brietenmoser did not testify, it was not specifically established that either of these two individuals were supervisors under the Act.

On August 15, Bryson did not report to work. He testified the reason was because he had the flu and although he attempted to call the plant for about an hour that evening to notify them he would not be there no one answererd the telephone. Ann Bryson, who is Bryson's mother and lives upstairs from her son in the same house, corroborated his undisputed testimony which I credit.

On Monday morning, August 18, Vice President Birtler called Bryson at home and inquired why he had been absent the previous Friday. While Bryson stated he explained he had been ill and had unsuccessfully attempted to contact the plant, Birtler's recollection was Bryson just said he could not make it and he did not believe Bryson mentioned being sick. Birtler also asked Bryson whether he would be at work that day whereupon Bryson informed him he did not know at the time. According to Bryson, he further informed Birtler it depended on how he felt. Although Bryson stated Birtler told him if he had not heard from him by 4 p.m. he would assume he was still sick and would find a replacement for him, Birtler's version was he gave Bryson a certain time, which he could not now recall, to let him know so he would have sufficient time to make other arrangements if Bryson could not be there.

Ann Bryson, who stated she listened in on the telephone conversation on her extension telephone, corroborated Bryson's testimony. She further testified, that about 12 or 12:30 p.m. that day, Birtler called again and when she answered the telephone he requested her to give her son a message that they were having a meeting and if his health permitted for him to be there. However, she replied she doubted it. Bryson, who stated he heard the telephone ring on that occasion and picked it up and listened in on the conversation, corroborated his mother's testimony.

Birtler testified he did not remember having a conversation with Ann Bryson and only recalled the one conversation with Bryson that day during which he said he also told Bryson they were having a meeting at 2 p.m. that day and asked him to be present because it was a very important meeting and pertained to all the employees.

I credit the testimony of Bryson,[15] which was corroborated by Ann Bryson, rather than the testimony of Vice President Birtler whom I discredit. Apart from by observations of the witnesses in discrediting Birtler, his testimony during the hearing was both inconsistent and contradictory.

Vice President Birtler held a meeting for all the employees[16] that day and informed them he had been advised of the possibility of efforts being made about getting employees to join a union. According to Birtler, what prompted the meeting was he had been on vacation the previous week and upon his return he had been informed by an employee and a number of other persons of discussions about the possibility of bringing in a union and starting a card campaign.

That afternoon at the request of Union Business Agent Jacobs, Bryson met with Jacobs and a couple of Respondent's employees for about an hour. However, Bryson stated he was still sick and left the meeting and went home and went to bed.

Bryson did not report to work on the evening of August 18.

Vice President Birtler testified after Bryson failed to call in by the time set and did not report for work on August 18, that the following day he called Bryson at home and asked him why he had not come to work. When Bryson replied he was not able to make it, Birtler asked Bryson whether he intended to work that night; whereupon Bryson informed him he would. Birtler said he told Bryson he had to be able to rely upon him because if he did not show up he would have to make other arrangements.

Bryson denied having any conversation with Birtler on August 19, and I credit his denial rather than the testimony of Birtler, whom I previously discredited.

Birtler stated during the day on Tuesday, August 19, he made the decision to discharge Byrson and dictated his termination letter. He stated his reason for Bryson's discharge was his unexcused absences and claimed Bryson's union activity did not have anything to do with his decision. This termination letter dated August 19, stated Bryson was terminated effectively August 19 for the following reasons:

> The Company's decision to terminate your employment is based on your unreported absence and failure to report for work on 8/1/80, your unreported absence and failure to report for work or call in on 8/15/80 and on 8/18/80. This action is consisted with the established-Company policy.

The letter also stated that Bryson's termination was based on the folloiwng company rules, which were set out as follows:

> No. 16. Absence not excused by the Company or failure to notify the Company immediately of absence and the reason.
>
> No. 17. Repeated absenteeism or tardiness.

The letter further gave Bryson until August 22 to contact Birtler if there were any circumstances which should be brought to his attention regarding his absences and failure to call in as required by their policy.

Birtler testified on August 19 that he left instructions with Second-Shift Supervisor Griffith that if Bryson showed up and wanted to go to work to notify him so he could return to the plant and discuss it with Bryson. According to Birtler, he wanted to personally present the termination letter he had dictated to Bryson and discuss it with him as it was his policy to terminate employees in that manner. However, he stated the next morning he mailed the letter to Bryson because Bryson had failed

[15] Those portions of Bryson's affidavit offered for purposes of impeaching his testimony have been considered in evaluating his credibility, however I do not find them persuasive.

[16] Bryson did not attend.

to show up for work on August 19, which he learned by checking with Griffith[17] who had not called him.

Contrary to Birtler's testimony, Bryson testified that he did report for work on the evening of August 19. However, Second-Shift Supervisor Griffith met him at the door when he arrived and informed him without giving him any reason that he had been replaced. He then contacted his mother, who had driven him to work that evening, to come and get him which she did. Ann Bryson corroborated her son's testimony.

Second-Shift Supervisor Griffith stated he did not remember making any statement to Bryson about his being replaced. He claimed the last time he had seen Bryson was on, which he believed but was not positive, August 15 at which time he said Bryson came to the plant about 7 or 7:30 p.m. and appeared to be drinking, whereupon he questioned Bryson about it but Bryson denied it. Bryson denied the incident.

I credit Bryson's testimony, which was corroborated in part by his mother, rather than Griffith. Besides my observation of the witnesses in discrediting Griffith, his testimony was vague and implausible.

On August 20, Bryson contacted Vice President Birtler and pursuant to his inquiry, Birtler informed him he had been terminated and sent a letter explaining the reasons.[18]

Birtler further testified that during this conversation he told Bryson he would like for him to come in so they could discuss it face to face because it was a very serious matter which he felt should not be discussed over the telephone, whereupon Bryson said he would and inquired about getting his final paycheck.

According to Birtler, Bryson came in that same day and got his paycheck from him at which time he again told Bryson he was terminated but if there was any mitigating circumstances, Bryson could document them and he would be happy to look at them. Birtler further stated upon asking Bryson the reasons for his absences, Bryson mentioned in one instance he just could not make it and had been sick whereupon he said he told Bryson to produce a doctor's excuse and he would reconsider.[19]

Bryson, however, testified he did not go to the plant to get his check until about a week after his termination and denied Birtler said anything to him at the time.

I credit Bryson's testimony rather than Birtler for reasons previously given.

After Bryson received his termination letter on August 21, he stated that the following day he called Birtler and told him the reasons for his termination were a bunch of garbage and the reason he was being fired was because of his union activities. Birtler laughed and informed him the reasons were those stated in the letter. However, Birtler then said if he could possibly give up some of the activities he was involved in he could probably have his job back, whereupon he informed Birtler he was not giving up any activities and was going to take it to the National Labor Relations Board.

Ann Bryson, who testified she listented in on the conversation at her son's request, corroborated Bryson's testimony.

Bryson further testified that about a week later Birtler called and asked him whether he had time to think about it and told him if he gave up his activities he could have his job. His response was he had not planned on giving up his activities at that time.

Birtler denied having any further conversations with Bryson during this period after August 20 and denied he talked to Bryson on the telephone that Friday.

I credit Bryson, whose testimony was corroborated in part by Ann Bryson, concerning those conversations rather than Birtler's denials. Having credited Bryson and absent as here any showing Bryson was engaged in any type activities other than his union activities, I find Vice President Birtler indicated to Bryson he could have his job back if he gave up his union activities.

The Respondent has a point system for unexcused absences applicable to all of its employees including supervisors. Under this system an employee who has an unexcused absence without calling in within the first scheduled hour is assessed 3.5 points and if the employee calls in within the first scheduled hour the employee is assessed 2 points. The accumulation of 3 points in any of the 30-consecutive scheduled workdays requires a verbal warning. If that employee then receives more than 1 additional point within the 30 consecutive scheduled workdays following the verbal warning, the employee is issued a written warning. For receiving more than 1 additional point within 30-consecutive scheduled workdays following the written warning or for the accumulation of 10 or more points in any 6-month period the employee is discharged.

Prior to his discharge Bryson did not receive any verbal or written warnings. Insofar as the August 1 unexcused absence date given for his discharge is concerned, Bryson said he could not recall whether he worked that day or not.

Vice President Birtler listed the names of seven other employees who had been discharged for unexcused absences. However, Respondent's absentee records reflect for April several employees including L. Abbott, T. Wigle, and P. Kasson who had three or more unexcused absences without being discharged and another employee K. Carter who had five unexcused absences before being terminated. Respondent's record also reflect Gary Van Winkle, who was included in those seven employees listed by Birtler, was sent a letter dated August 22, terminating him after he had accumulated five unexcused absences between August 1 and 21.[20]

C. *Analysis and Conclusions*

The General Counsel contends Respondent violated Section 8(a)(1) and (3) of the Act by discriminatorily dis-

[17] Griffith did not testify concerning such arrangements or about having such conversations with Birtler.

[18] Bryson stated the reasons he contacted Birtler was because his niece, Pamela Nethers, had informed him the previous afternoon there was a rumor in the plant he had been terminated. Bryson acknowledged having stated in an affidavit given to a Board agent that Nethers had called him in the morning.

[19] Birtler claimed a doctor's excuse was required where there was more than a 1-day absence.

[20] According to Vice President Birtler employees are not terminated for unexcused absences where there are mitigating circumstances.

charging and refusing to reinstate Bryson because of his union activity and made an unlawful statement to him concerning his reemployment, which Respondent denies.

Section 8(a)(1) of the Act prohibits an employer from interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act. Section 8(a)(3) of the Act provides, in pertinent part: "It should be an unfair labor practice for an employer . . . by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. . . ."

The law is well established that to discharge an employee for engaging in union activities violates Section 8(a)(3) and (1) of the Act. Direct evidence of discriminatory motivation is not necessary to support a finding of discrimination and such intent may be inferred from the record as a whole. *Health International, Inc.*, 196 NLRB 318 (1972).

The findings *supra*, establish that Vice President Birtler indicated to Bryson he could have his job back if he gave up his union activities. Inasmuch as the right of employees to engage in union activities is protected under Section 7 of the Act, I find that Respondent, by Birtler making such statement, has interfered with, restrained, and coerced Bryson in his exercise of his rights and thereby violated Section 8(a)(1) of the Act.

The remaining issue to be resolved is whether Bryson's discharge and denial of reinstatement was discriminatorily motivated.

The evidence *supra* shows Brysons was an active union adherent who was responsible for initiating the Union's campaign to organize Respondent's employees. Not only was he discharged by Vice President Birtler effective August 19, which was the day after Birtler learned of the Union's organizing campaign upon his return from vacation and held a meeting of all the employees to discuss it, but Birtler, as herein found, unlawfully indicated to Bryson after he was discharged that he could have his job back if he gave up his union activities. Such unlawful statement clearly indicates Birtler was aware of Bryson's union activities prior to his discharge and discharged him for that reason, otherwise there would have been no basis for conditioning his rehire on giving his union activities.

Further Birtler's claim, asserted as Respondent's defense, that Bryson was discharged for unexcused absences in violation of company rules was refuted by the evidence and contrary to rule themselves. Bryson did inform Birtler on August 18 about not coming to work that day unless he felt better and about his absence the previous Friday because of illness and he also reported to work the next day but was prevented from working by Second-Shift Supervisor Griffith. Notwithstanding the rules on unexcused absences required both oral and written warnings prior to discharge, Bryson never received any such warnings nor did Birtler even mention this subject to Bryson prior to his termination. Moreover, other employees with more unexcused absences than Bryson, who had valid reasons for being absent of which Britler was aware, were retained rather than discharged which also reflects disparate treatment towards Bryson in applying such rules.

Based on the foregoing findings, including Bryson's union activities of which Respondent had knowledge; the unlawful statement made to Bryson indicating he could have his job back if he gave up his union activities; the timing of his discharge in relation to Britler learning of his union activities; and having rejected Respondent's defense for discharging him which I find is but a pretext to conceal its real discriminatory motive, I am persuaded and find that Respondent discriminatorily discharged Bryson effective August 19 and thereafter refused to reinstate him because of his union activities in violation of Section 8(a)(3) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, found to constitute unfair labor practices occurring in connection with the operations of Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

CONCLUSIONS OF LAW

1. Universal Veneer Mill Corp. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Ohio State Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. By indicating to Wayne Bryson, Jr., he could have his job back if he give up his union activities, Respondent had interfered with, restrained, and coerced its employee in the exercise of his rights guaranteed in Section 7 of the Act and has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.
4. By discriminatorily discharging Wayne Bryson, Jr., effective August 19, 1980, and thereafer refusing to reinstate him because of his union activities, Respondent has engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.

The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

Accordingly, Respondent shall be ordered to offer immediate and full reinstatement to Wayne Bryson, Jr., to his former job or, if that job no longer exists, to a substantially equivalent job, without prejudice to his seniority and other rights and privileges, and to make him whole for any loss of earnings and other compensation he may have suffered as a result of the discrimination

against him in his employment herein found by discriminatorily discharging him effective August 19, 1980, and thereafter refusing to reinstate him. Backpay shall be computed in the manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).[21]

Upon the foregoing findings of fact, conclusions of law and the entire record and pursuant to Section 10(c) of the Act, I hereby issued the following recommended:

ORDER[22]

The Respondent, Universal Veneer Mill Corp. Newark, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Indicating to employees they can have their jobs back if they give up their union activities.

(b) Discouraging activities in the Ohio State Council of Carpenters, United Brotherhood and Joiners of America, AFL-CIO, or any other labor organization by discharging, refusing to reinstate, or in any other manner discriminating against employees in regard to their hire or tenure of employment or any other term or condition of employment.

(c) In any like or related manner interfering with, restraining, or coercing its employees n the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policy of the Act:

(a) Offer Wayne Bryson, Jr., immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent job, without prejudice to his seniority and other rights and privileges, and make him whole for any loss of earnings and other compensation he may have suffered by reason of our discrimination against him herein found by discriminatorily discharging him effective August 19, 1980, and thereafter refusing to reinstate him, in the manner set forth in that section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze and determine the amount of backpay due under the terms of this Order.

(c) Post at its Newark, Ohio, facility copies of the attached notice marked "Appendix."[23] Copies of the said notice, on forms provided by the Regional Director for Region 8, after being duly signed by Respondent's authorized representative, shall be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 8, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and hereby is, dismissed insofar as it alleges unfair labor practices not specifically found herein.

[21] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[22] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[23] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT indicate to employees they can have their jobs back if they give up their union activities.

WE WILL NOT discourage activities in the Ohio State Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, or any other labor organization, by discharging, refusing to reinstate, or in any other manner discriminating against employees in regard to their hire or tenure of employment or any other term or condition of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guranteed in Section 7 of the Act.

WE WILL offer Wayne Bryson, Jr., immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent job, without prejudice to his seniority and other rights and privileges, and WE WILL make him whole for any loss of earnings and other compensation he may have suffered by reason of our discrimination against him, with interest.

UNIVERSAL VENEER MILL CORP.